

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  DEREGULATION OF LOCAL EXCHANGE SERVICES IN COMPETITIVE MARKETS	DOCKET NO. INU-04-1
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**PROTECTIVE ORDER AND ORDER DENYING MOTION**

(Issued July 12, 2004)

On May 7, 2004, the Utilities Board (Board) initiated this notice and comment proceeding to consider whether local exchange service to business and residential customers in certain Iowa communities is subject to effective competition and should be deregulated pursuant to Iowa Code § 476.1D (2003) and 199 IAC 5.3(1). As a part of that order, the Board directed certain local exchange service providers to file updated responses to the Board's 2003 survey of local exchange service providers in Iowa. Those responses include information that many companies consider to be trade secrets or otherwise entitled to confidential treatment, so many of the responses were filed with a request for confidential treatment pursuant to 199 IAC 1.9. The Board granted many of those requests by order issued June 23, 2004, and more requests are pending before the Board at this time.

On June 28, 2004, the Iowa Association of Municipal Utilities (IAMU) filed a request for release of all filings that were granted confidentiality in the June 23, 2004, order. In its motion, IAMU does not indicate whether it has attempted to obtain the information directly from the carriers that filed it with the Board, but the Board

understands that IAMU has been engaged in direct discussions with at least some of those carriers. It appears the IAMU motion will be rendered moot by this order and it will therefore be denied, without prejudice to re-filing if necessary.

Historically, when participants in a Board proceeding seek and receive confidential treatment for certain information from the Board (pursuant to 199 IAC 1.9), they have then entered into mutual confidentiality agreements that allow them to share the same information among themselves. In this matter, however, it appears this process may not be as effective as it usually is. The number of participants and the applicable time frames make the process of negotiating individual confidentiality agreements unwieldy. Therefore, the Board is taking the unusual step of entering this protective order.

This order reflects the Board's understanding of the requirements of typical confidentiality agreements entered into by parties to Board proceedings. However, if the requirements and restrictions on use that are set forth below are somehow inappropriate for use in this matter, the Board will entertain motions to modify this protective order.

Pursuant to this order, the participants to this proceeding shall have access to information that is filed with the Board as confidential under the conditions specified in Attachment A to this order. Those conditions may be briefly described as follows:

1. The information is to be used solely for purposes of this proceeding or any subsequent, directly-related proceedings;
2. Only the attorneys for the participant and expert witnesses (who are not otherwise involved in advising the party on business development,

pricing, marketing, product development, or related matters) (and their associates as necessary) in this proceeding will have such access;

3. The information shall not be shared with persons responsible for the participant's marketing, pricing, and product or service development;

4. All persons proposed to have access to the confidential information for purposes of the proceeding must be identified by the participant and execute a document acknowledging this protective order and agreeing to be bound by the order;

5. In the event that the participant makes a subsequent filing, or intends to provide testimony at hearing, utilizing the confidential information, it shall make every effort to protect the confidential information; and

6. Any participant desiring to opt out of the Board's protective order and relinquish its access to the confidential information must do so in writing and shall then not have access to any such confidential information unless and until the participant opting out negotiates a separate confidentiality agreement with the other participant or otherwise seeks access in accordance with the Board's rules.

Thus, if a participant desires access to the confidential material filed with the Board, but does not wish to negotiate a separate confidentiality agreement with the participant that originally submitted the confidential material (the producing participant), then the participant seeking access shall submit a data request to the producing participant requesting the information. The data request should be accompanied by a written statement acknowledging this protective order and identifying each person who will be reviewing or have access to the information, by name and job title or other job description.

The Board emphasizes that it will not provide access to the confidential material through its Records Center, as the Board has no process in place for verifying participant status or otherwise applying the requirements of this order on a

day-to-day basis. The participants are to obtain the information from the producing participant.

**IT IS THEREFORE ORDERED:**

1. The Board hereby enters this protective order as described in Attachment A, which is incorporated herein by this reference.
2. Within 14 days of the date of this order, any participant may file a motion to modify the terms of this protective order, specifically stating the proposed modification and the reasons in support of the proposal.
3. The "Request for Release of Information Pursuant To 1.9(8)(b)(3) And Motion To Suspend Procedural Schedule" filed on June 28, 2004, by the Iowa Association of Municipal Utilities is denied, without prejudice, as moot.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 12<sup>th</sup> day of July, 2004.

## ATTACHMENT A

### PROTECTIVE ORDER

1. On May 7, 2004, the Iowa Utilities Board (Board) initiated this proceeding to consider whether certain local exchange services are subject to effective competition and should be deregulated pursuant to Iowa Code § 476.1D and 199 IAC chapter 5. Some of the participants to this proceeding seek documents in this proceeding from one or more of the other participants that contain proprietary or confidential information and, therefore, should be made available only pursuant to a protective agreement. Consequently, the Board is entering this protective order to ensure that the documents considered by the producing participant to be confidential and proprietary are afforded protection but are also available to other participants on reasonable terms. This protective order does not constitute a resolution of the merits concerning whether any confidential information would be released publicly by the Board upon a proper request.

2. *Non-Disclosure of Stamped Confidential Documents.* Except with the prior written consent of the producing participant, or as hereinafter provided under this order or any subsequent Board order, neither a Stamped Confidential Document nor the contents thereof may be disclosed by a receiving participant to any person. A "Stamped Confidential Document" shall mean any document that has been submitted to the Board pursuant to a request for confidential treatment and bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "CONFIDENTIAL" to signify that it contains information that the producing participant believes should be subject to protection. For purposes of this order, the term "document" means all written, recorded, electronically stored, or graphic material, whether produced or created by any participant or another person.

3. *Permissible Disclosure.* Subject to the requirements of paragraph 5, Stamped Confidential Documents may be reviewed by counsel for a receiving participant who are actively engaged in the conduct of this proceeding, provided that those counsel seeking access are not involved in competitive decision-making; i.e., counsel's activities, association, and relationship with a client that are not such as to involve counsel's advice and participation in any or all of the client's business decisions made in light of similar or corresponding information about a competitor. Subject to the requirements of paragraph 5 and subject to the obligation to secure the confidentiality of Stamped Confidential Documents in accordance with the terms of this Agreement, such counsel may disclose Stamped Confidential Documents to: (i) the partners, associates, secretaries, paralegal assistants, and employees of such counsel to the extent reasonably necessary to render professional services in this proceeding; (ii) the receiving participant's staff members involved in this proceeding; (iii) any outside consultant or expert retained for the purpose of assisting counsel in

these proceedings and who undertakes not to become involved during the pendency of this proceeding and two years thereafter, either in the analysis underlying business decisions or the making of business decisions of any competitor, or any customer (other than a customer who purchases tariffed products only) of, or person who has a non-disclosure agreement with the producing participant; (iv) employees of such counsel involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving data or designing programs for handling data connected with this proceeding; and (v) employees of third-participant contractors performing one or more of these functions. The producing participant shall have the right, at its option, to impose reasonable restrictions on the review and disclosure of Stamped Confidential Documents containing highly sensitive information and designated as "Highly Sensitive." Any participant may seek relief from the Board from any restrictions imposed by another participant on information claimed to be highly sensitive.

4. *Access to Confidential Documents.* Counsel described in paragraph 3 shall have the obligation to ensure that access to Stamped Confidential Documents is strictly limited as prescribed in this order. Such counsel shall further have the obligation to ensure (i) that Stamped Confidential Documents are used only as provided in this order; and (ii) that Stamped Confidential Documents are not duplicated except as necessary for use in these proceedings.

5. *Procedures for Obtaining Access to Confidential Documents.* In all cases where access to Stamped Confidential Documents is permitted pursuant to paragraph 3, and before reviewing or having access to any Stamped Confidential Documents, each person, other than counsel, seeking such access shall execute the Acknowledgment of Confidentiality in the form attached hereto as Exhibit A, which the receiving counsel will retain on file, prior to such person's reviewing or having access to any such Stamped Confidential Documents.

6. *Use of Confidential Information.* Counsel described in paragraph 3 may, in any documents that they file in this proceeding, refer to information found in Stamped Confidential Documents or derived therefrom (hereinafter, "Confidential Information"), but only if they comply with the following procedure:

a. Any portion of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings.

b. The portions of pleadings containing or disclosing Confidential Information must be covered by a separate letter to the Executive Secretary of the Board referencing this order.

c. Each page of any participant's filing that contains or discloses Confidential Information subject to this order must be clearly marked "Confidential."

d. The confidential portion(s) of the pleading shall be served upon the Secretary of the Board and the participants to this agreement. Such confidential portions shall be served under seal and shall not be placed in the Board's public files. A participant filing a pleading containing Confidential Information shall also file a redacted copy of the pleading containing no Confidential Information, which copy shall be placed in the Board's public files.

e. The producing participant shall have at least 14 days after the filing of sealed Confidential Information to seek confidential treatment pursuant to the Board's rules.

f. The receiving participant shall exercise good faith to advise the producing participant of the anticipated filing of sealed Confidential Information as soon as possible prior to the filing.

7. *No Waiver of Confidentiality.* Disclosure of Stamped Confidential Documents or Confidential Information as provided herein by any person shall not be deemed a waiver by the producing participant of any privilege or entitlement to confidential treatment of such documents or information. Reviewing participants, by viewing Stamped Confidential Documents or Confidential Information: (a) agree not to assert any such waiver; (b) agree not to use information derived from any Stamped Confidential Documents or Confidential Information or to seek disclosure in other proceedings; and (c) agree that accidental disclosure of Stamped Confidential Documents or Confidential Information by the receiving participant shall not be deemed a waiver of any privilege or entitlement as long as the receiving participant takes prompt remedial action.

8. *Subpoena by Courts or Other Agencies.* If a court law enforcement authority, or another administrative agency subpoenas or orders production of Stamped Confidential Documents or Confidential Information that any participant has obtained under terms of this order, that participant shall promptly notify the producing participant of the pendency of such subpoena or order. Consistent with the independent authority of any court or administrative agency, such notification must be accomplished such that the producing participant has full opportunity to oppose such production prior to the production or disclosure of any Stamped Confidential Document or Confidential Information.

9. *Client Consultation.* Nothing in this order shall prevent or otherwise restrict any participant's counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Stamped Confidential Documents; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not disclose Stamped Confidential Documents or Confidential Information.

10. *Violations of Agreement.* Persons obtaining access to Stamped Confidential Documents or Confidential Information under this Agreement shall use the information solely for the preparation and conduct of this proceeding and any subsequent judicial or administrative proceeding arising directly from this proceeding and, except as provided herein, shall not use such information for any other purpose, including business, governmental, commercial, or other administrative, regulatory, or judicial proceedings. Should any person that has obtained access to Stamped Confidential Documents or Confidential Information under this order violate any of its terms, the participant shall immediately convey that fact to the producing participant. Further, should such violation consist of improper disclosure of a Stamped Confidential Document or Confidential Information, the violating participant shall take all necessary steps to remedy the improper disclosure. The Board has full authority to fashion appropriate sanctions for violations of this order.

11. *Prohibited Copying.* If, in the judgment of the producing participant, a document contains information so sensitive that it should not be copied by anyone, it shall bear the additional legend "Copying Prohibited," and no copies of such document, in any form, shall be made. Application for relief from this restriction against copying may be made to the Board, with notice to counsel for the producing participant.

12. *Termination of Proceeding.* The provisions of this order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding (which includes any administrative or judicial review), Stamped Confidential Documents and all copies of same shall be destroyed. No material whatsoever derived from Stamped Confidential Documents may be retained by any person having access thereto, except counsel to a receiving participant (as described in paragraph 3) may retain, under the continuing strictures of this order, two copies of pleadings containing Confidential Information prepared on behalf of that receiving participant.



EXHIBIT A

**ACKNOWLEDGEMENT OF PROTECTIVE ORDER**

**Iowa Utilities Board Docket No. INU-04-1**

I have been presented with a copy of the Protective Order issued by the Iowa Utilities Board in Docket No. INU-04-1. I have read the Protective Order and agree to be bound by each and every term of the Agreement.

Dated \_\_\_\_\_, 2004.

\_\_\_\_\_  
[Signature of person requesting review of  
Stamped Confidential Information]

\_\_\_\_\_  
[Full Name]

\_\_\_\_\_  
[Company and Position]

\_\_\_\_\_  
[Permanent Address]